THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.14984 of 2007

Date 16-7-2007

Between:
The Senior Superintendent of Post Offices,
Hyderabad South East Division, Hyderabad and others.
……PETITIONERS

AND

B. Srinath
……..RESPONDENT

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 14984 of 2007

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking a writ of Certiorari calling for the records relating to the order dated 17.4.2007 passed in O.A. No. 600 of 2006 on the file of Central Administrative Tribunal, Hyderabad Bench and to quash the same as illegal and arbitrary.

The respondent herein, who is a Postal Assistant, filed O.A. No. 600 of 2006 before the Central Administrative Tribunal challenging the order dated 25.2.2005 passed by the respondents directing recovery of an amount of Rs.65,988/- from the respondent at the rate of Rs.1,850/- per month for 35 months and Rs.1,238/- for 36th month. The allegation against the respondent was that he was negligent in maintaining the stock registers and had he been diligent enough and brought to the notice of the superiors about the alleged fictitious liabilities shown in the accounts, it would not have been possible for the Sub-Post Master to commit such frauds continuously for a period of one and half years. The contention of the respondent was that there was no negligence at all on his part and he was in no way responsible for the alleged fraud committed by the Sub Post Master and therefore no amount can be recovered from him. It is also the contention of the respondent that no inquiry has been conducted and that the department straightaway

imposed the penalty of recovery without making any inquiry to find out whether there was any negligence on the part of the respondent - applicant and if so, whether it resulted in any loss to the department.

The petitioners herein filed counter before the Tribunal stating that firstly, the applicant failed to maintain stock registers for each Sub-post office in Form NC 12 (a) showing the stock position of the certificates issued by that Sub-Post Office, including HCL P.O.; secondly that he did not ensure submission of statements showing the stock position of certificates by each sub-post office on the first working day of each month to enable the authorities to have a check on the balance held by that sub-post office with entries in the H.O. Stock Register; thirdly, that he was to maintain the ledger account in Form NC 49 at Station, Kachiguda, H.O. for each authorized Agent separately for each denomination and the applicant without checking the bills with the entries in the NC 49 register, put up the N.S. Agent Commission bills to the concerned Assistant Postmaster amounting to Rs. 2120/- for the months of April, 1998 to October, 1998 which were passed and paid even though the sale proceeds of the same were not accounted for in the P.O. and fourthly, the respondent did not scrutinize the issue journals received from Sub-Offices including HCL P.O. to see whether the balance of certificates in hand are shown in the remarks column of the issue journals. The Department alleged that the failure on the part of the delinquent to perform the above duties and checks has resulted in commission/continuation of frauds to the tune of Rs.5,24,500/- by Sri S.R.H. Naqvi, the then SPM, HCL SO. It was further stated that due to his contributory negligence he was awarded punishment of recovery of Rs.68,988/- at the rate of Rs.1,850/- per month for 35 months and Rs.1,238/- as last instalment commencing from the salary of February, 2005.

Having heard the learned counsel for the parties and perusing the material available on record, the Tribunal allowed the O.A. filed by the respondent herein holding that without conducting inquiry the department cannot unilaterally come to the conclusion that there was negligence or breach of the order on the part of the employee and decided to recover the amount alleged to have been misappropriated by somebody else and not the employee concerned. Aggrieved by the same, the present writ petition is filed.

Heard Sri A. Rajashekar Reddy, Assistant Solicitor General of India appearing for the petitioners, and perused the material available on record.

It is an admitted fact that no inquiry has been conducted to determine whether there was any negligence or contributory negligence on the part of the respondent – applicant. It is also not the case of the petitioners that there is collusion between the respondent and Sri S.R.H. Naqvi, Sub Post Master. Though it is contended that no inquiry need be conducted as the punishment was a minor penalty, this Court is not in agreement with the said contention. While issuing the Memo dated 16.7.2004, the respondent – applicant was asked to make representation and that if she fails to submit representation within 10 days of the receipt of the memo it would be presumed that he has no representation to make. After service of such memo the respondent – applicant submitted his explanation on 21.7.2004 denying the allegations and he did not admit his negligence or contributory negligence. As rightly pointed out by the Tribunal, after the applicant submitted the explanation, the respondents – petitioners herein passed the order of punishment stating that the respondent – applicant has not put-forth any extenuating circumstances. No inquiry is conducted to determine whether there was any negligence on the

part of the applicant, particularly in view of the fact that the respondent – applicant categorically denied the said allegation. The Tribunal is right in holding that without determining the alleged negligence after due inquiry no amount can be recovered from the employee who denied negligence on his part, more so, when it is not the case of the petitioners that the respondent – applicant utilized the amount or colluded with the Sub Post Master and misappropriated the amounts. Having heard the learned Assistant Solicitor General and perusing the material available on record, we are of the considered view that there is no material placed before this Court or before the Tribunal that a proper inquiry has been conducted for arriving at the fact as to whether there was any pecuniary loss caused to the Government by the act of the respondent – applicant and in the absence of any such inquiry the respondent – applicant cannot be made liable for the contributory negligence.

Having regard to the facts and circumstances, we find no illegality or irregularity in the order passed by the Tribunal warranting interference by this Court. There is no merit in the writ petition. It is accordingly dismissed.

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T. MEENA

KUMARI, J.

Date: 16-07-2007

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G.

CHANDRAIAH, J.

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